

5. Plaintiff, in compliance with the provisions of the Federal Tort Claims Act, 28 U.S.C. § 2675(a), filed an administrative claim for damages arising from negligence committed by agents, servants, workmen, and/or employees of the United States Public Health Service, on or about July 22, 2009. (Copy of which is attached as Exhibit “B”) On June 4, 2010, Defendant denied the administrative claim and the plaintiff received notice of such denial. (Copy of which is attached as Exhibit “C”)

6. On or about July 22, 2009, plaintiff was admitted as an inpatient to the James Van Zandt Veteran’s Hospital in Altoona, Pennsylvania with a history of brittle diabetes, neuropathy, brain damage, dementia, seizure disorder.

7. Plaintiff needs to be constantly supervised because of the severity of his medical conditions.

8. At or about 6:00 p.m on July 22, 2010, the plaintiff was sitting in the hall across from the nurse’s station eating his evening meal.

9. On or about July 22, 2010, nurses acting as agents, servants, workmen and/or employees of defendant, in the course and scope of their employment, allowed the plaintiff to socialize unsupervised privately with another patient, an eighty-four year old gentlemen with medical conditions whose name is unknown to the plaintiff.

10. In the course of the conversation, the elderly gentlemen placed both of his hands on the plaintiff’s left leg, on or about the knee, and moved his hands up plaintiff’s leg to the thigh and groin area almost coming in contact with his genitals, to which the plaintiff demanded that the man stop touching him, at which point the man stopped and returned to his room.

11. Immediately following the inappropriate touching, the plaintiff called his mother and told her what had happened to him. She then called the police at the hospital to inform them.

12. In an investigation by Joseph Hindinger of the James VanZandt Police, nurses Pam Brant, Claudia Paul and Supervisor Deb Myers identified both patients and agreed that they were the only two patients in the hall by the nurse's station at the time of the alleged incident. The nurses stated that they were not watching the patients all the time but did notice them throughout the course of performing their duties. Pam Brant also indicated that the elderly gentleman had a history of making sexual suggestions to female staff in the past. (A copy of Investigative report is attached as Exhibit "D")

13. Plaintiff's injuries, as hereinafter set forth, were directly and proximately caused by the carelessness, negligence, and inattentiveness of its agents, servants, workmen, and/or employees, and include but were not limited to the following: post traumatic stress disorder, anxiety, depression.

14. The carelessness and negligence of defendant, acting by and through its agents, servants, workmen, and/or employees, consisted of the following:

- (a) Failure to conform to the requisite standard of reasonable medical care and skill under the circumstances, and at the time, with respect to plaintiff;
- (b) Failure to provide and render supervision of the incapacitated plaintiff while he was eating and conversing with another patient while being aware of the plaintiff and aggressor's physical and mental disabilities;
- (c) Failure to recognize a foreseeable problem that was probable to exist in an unsupervised interaction between the plaintiff and the aggressor due to the their patient histories;
- (d) Failure to properly select, train, and supervise its agents, servants, workmen, or employees to assure plaintiff reasonable treatment and care under the circumstances;

(e) Negligence as a matter of law; and

(f) Such other acts and/or omissions constituting carelessness, negligence, and malpractice as may become evident during the course of discovery or at the trial of this action.

15. As a direct result of the aforementioned injuries, plaintiff has suffered, and will continue to suffer for an indefinite time in the future, great mental anguish, to his great detriment and loss.

16. As a further result of the aforementioned injuries, plaintiff has been unable to trust male nurses and other who are needed to help care for him because of the event. In addition, plaintiff has needed counseling in dealing with the event and has gotten treatment from a psychiatrist.

WHEREFORE, plaintiff demands a judgment against defendant in an amount in excess of \$100,000.00.

Date: 9/23/2010

Respectfully submitted,

/s/Arthur S. Cohen

Arthur S. Cohen, Esq.
Attorney for Plaintiff
Attorney I.D. 18548
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Duncansville, PA 16635
(814) 695-5518

LARRY ALLEN McCLOSKEY, JR., an	:	CIVIL ACTION
incapacitated individual, by his guardian	:	
NAOMI McCLOSKEY,	:	No:
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
THE UNITED STATES OF AMERICA,	:	
	:	
	:	
Defendant	:	

VERIFICATION

ARTHUR S. COHEN, ESQUIRE, hereby states that he is the attorney for the Defendant in this action and verifies that the statements made in the foregoing pleading are true and correct to the best of his knowledge, information and belief.

The undersigned understands that the statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.

Date: 9/23/10

/s/Arthur S. Cohen

Arthur S. Cohen, Esquire

LARRY ALLEN McCLOSKEY, JR., an	:	CIVIL ACTION
incapacitated individual, by his guardian	:	
NAOMI McCLOSKEY,	:	No:
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
THE UNITED STATES OF AMERICA,	:	
	:	
	:	
Defendant	:	

CERTIFICATE OF SERVICE

I, Arthur S. Cohen, Esquire, hereby certify that a true and correct copy of the Complaint served via United States Postal Service, Regular Mail addressed as follows:

VA Pittsburgh Healthcare System
ATTN: James C. Sinwell, Esq.
7180 Highland Drive
Pittsburgh, PA 15206-1297

Date: 9/23/10

/s/Arthur S. Cohen

Arthur S. Cohen, Esquire